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September 13, 1996

Via Federal Express

Docket Coordinator
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 Superfund Docket
 c/o Alex Kalinowski
 1235 Jefferson Davis Highway
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**Re: National Priorities List for Uncontrolled Hazardous Waste Sites,
 Proposed Rule No. 20. 61 FR 30575
NPL Listing of Sauget Area 1, Sauget, Illinois**

Dear Sir or Madam:

On behalf of our client, Cerro Copper Products Co. ("Cerro"), I enclose an original and three copies of Cerro's comments in response to the National Priorities List ("NPL") for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 20, published at 61 Fed. Reg. 30575 on June 17, 1996 and an original and three copies of the Certification of Ira S. Berg, Esq. Volumes I - IV in support of these comments. Further, enclosed is an extra copy of Cerro's NPL comments which we request be stamped "filed" and returned in the enclosed self-addressed stamped envelope.

Cerro submits this comment pursuant to the September 16, 1996 deadline extension which was granted by the United States Environmental Protection Agency ("USEPA") on July 26, 1996.¹ (See Certification of Ira S. Berg ("Berg Cert."), Ex. 1)

Cerro objects to the USEPA's proposal to list Sauget Area 1 located in Sauget, Illinois as a site on the NPL. A careful review of the HRS Documentation Record available from the USEPA Region V indicates a number of inaccuracies and omissions contained in the record. In particular, contrary to USEPA policy and precedent, the Agency inappropriately aggregated the nine areas located within Sauget Area 1 rather than individually listing each area. Further, assuming the USEPA correctly aggregated the sites, the USEPA violated its well established policy and procedures by failing to consider the remediation activities conducted at one of the Sauget Area 1 sites, known as Dead Creek Segment A ("DCA"), when calculating the HRS score. Similarly, the Agency's proposal is inconsistent with USEPA policy and procedure that dictate that portions of partially remediated sites be deleted from the NPL.

At the risk of belaboring some of the facts already in the public record, and in order to highlight the significance of other facts, it is important to trace the history and characteristics of Sauget Area 1 including the complete remediation of DCA at a cost of almost thirteen million dollars.

I. Background

Sauget Area 1 is located in the villages of Sauget and Cahokia in west-central St. Clair, County, Illinois. In September, 1985 the Illinois Environmental Protection Agency ("IEPA"), retained Ecology & Environmental, Inc. ("E&E") to conduct a comprehensive RI/FS for the Sauget area. The project area consisted of twelve suspected uncontrolled hazardous waste sites, and six segments of Dead Creek, a stream which once flowed southerly in the eastern portion of the project area. (See Berg Cert., Ex. 3, Ex. 4.) The Area 1 sites included former municipal and industrial waste landfills, surface impoundments or lagoons, surface disposal areas, and past excavations presumably filled with unknown industrial wastes. For convenience and to avoid any confusion stemming from previous file designations or aliases for the various sites or creek sectors, E&E assigned each site or creek sector an alphabetical designation (e.g., Dead Creek Segment A and Site I).

During the course of E & E's investigation, the public was kept apprised of the status of the investigation. (See Berg Cert., Ex. 5, Ex. 6 at 75-78.) On September 17, 1985, the IEPA issued a news bulletin alerting the public that E&E had been retained "to perform a

¹On July 26, 1996 the USEPA granted an extension of time of the public comment period to James W. Moorman. On July 30, 1996, counsel for Cerro submitted a letter to the USEPA and confirmed that the extension was also applicable to Cerro. (See Berg Cert., Ex. 2.)

comprehensive study of sixteen known or suspected hazardous waste sites in the vicinity of Dead Creek in St. Clair County." (Berg Cert., Ex. 7.) The news bulletin further stated that public hearings would be held to discuss the results of the environmental study and to gather public input on the choice of technologies to control further contamination. (*Id.* at 2.) Finally, the bulletin stated that informal meetings would be held with nearby residents. (*Id.*) On November 19, 1985, the IEPA issued its Community Relations Plan for the Sauget Sites. (Berg Cert., Ex. 8.) That document set forth, in detail, the community relations plan to be followed by the IEPA in the cleanup of the Sauget Sites. In May 1988, E&E issued its report entitled "Expanded Site Investigation Dead Creek Project Sites at Cahokia/Sauget, Illinois" (the "E&E Report"). The E&E Report was made available for public review at the Cahokia Public Library, the Cahokia Village Hall and the Sauget Village Hall. (Berg Cert., Ex. 9.)

Recognizing the environmental concerns set forth in the E&E Report, Cerro expressed a desire to cooperate with the IEPA in addressing the Sauget Sites. (*See* Berg Cert., Ex. 10.) In an effort to address conditions at DCA, Cerro retained the Avendt Group, Inc. (Avendt") to perform a Site Investigation and Remedial Alternatives Evaluation of DCA. (*See* Berg Cert., Ex. 11 at 1.) The purpose of the Site Investigation portion of the study was to fully evaluate DCA. (*Id.*) Field activities designed to characterize DCA began on July 5, 1989 and continued through July 21, 1989. (*Id.* at 13.) In addition, Avendt relied on certain Findings and Conclusions concerning DCA that were set forth in the E&E Report. (*Id.* at 10.) The information gathered from Avendt's investigation and the E&E Report was then used to evaluate alternatives to address the contamination identified in DCA. (*Id.* at 1.)

Avendt also conducted a feasibility analysis, designed to evaluate and recommend alternatives for the cleanup of DCA. (Berg Cert., Ex. 11, vol. 2 at 1.) Avendt screened 29 remedial technologies and ultimately conducted a detailed evaluation of four action alternatives -- Off-Site Landfill; Off-Site Incineration; On-Site Incineration; and Multi-Layer Cap -- in addition to a No Action Alternative. (*Id.* at 4.)

On November 4, 1989, Cerro met with the other PRPs and Sauget Village representatives at Sauget Village Hall and informed them of a potential removal action at DCA. Shortly thereafter on January 30, 1990, having been fully informed of all activities, testing, and sampling conducted as to date, the IEPA advised Avendt that the status report it had prepared on DCA was acceptable for inclusion in the final report characterizing DCA. (*See* Berg Cert., Ex. 12, Ex. 6 at 44:22.) In addition, in response to Cerro's request, the IEPA provided an outline for the "Site Investigation/Remedial Alternatives Evaluation for Creek Segment A". (*See* Berg Cert., Ex. 12.) The purpose of this outline was to permit Cerro to provide the IEPA with the equivalent of an Engineering Evaluation Cost Analysis as required by 40 CFR. 300.415 for an immediate removal. (*See* Berg Cert., Ex. 12, Ex. 6 at 47:12-25-50:1-2.) In light of all of the site work that had already been performed by E&E and Avendt, the IEPA stated that a formal RI/FS was not necessary. (*See* Berg Cert., Ex. 12.) Throughout the course of Avendt's investigation, drafts of the Avendt Study were forwarded to the IEPA for review and comment. (*See* Berg Cert., Ex. 13.) Avendt's investigation recommended a

removal action that involved the excavation and transportation to an off-site landfill of approximately 20,000 cubic yards of contaminated creek sediment from DCA. (See Berg Cert., Ex. 11 at ch. 7.) Avendt's two volume report, entitled "Site Investigation/Feasibility Study For Creek Segment A," was completed in June 1990 (the "Avendt Study"). The Avendt Study was then forwarded to the IEPA for review and comment. (See Berg Cert., Ex. 13.)

On July 5, 1990, and after several meetings between the IEPA and Cerro, a complaint was filed and a Consent Decree was entered into by Cerro and the State of Illinois in the action entitled People of the State of Illinois v. Cerro Copper Products Co. (See Berg Cert., Ex. 14.) The Consent Decree stated that the State of Illinois had reviewed the Avendt Study and found it consistent with the National Contingency Plan ("NCP") and the Illinois Hazardous Substances Contingency Plan, 36 Ill. Adm. Code Part 750 ("IHSCP"). The Consent Decree further stated that the State had reviewed Cerro's Removal Action Work Plan for DCA and found it to be consistent with the requirements of CERCLA, the State Act, the NCP, the IHSCP and the RI/FS. The Consent Decree required Cerro to conduct the removal action recommended by the Avendt Study (off-site landfill), subject to the State's approval, in accordance with sound scientific engineering and construction practices, consistent with the NCP and the IHSCP. In the motion to approve the consent decree the Illinois Attorney General certified that the Consent Decree was negotiated at arms length by Cerro through its' attorneys, consultants, and technical staff and by the State through representatives of the Illinois Environmental Protection Agency and the Office of the Attorney General. (See Berg Cert., Ex. 15; a certification from James L. Morgan, Senior Assistant Attorney General of the State of Illinois.)

News releases were issued in conjunction with the execution of the Consent Decree on July 5, 1990, and citizens and local officials were invited to review documents and request more information. (See Berg Cert., Ex. 16, Ex. 6 at 75-78.) Additionally Cerro conducted a press conference announcing the Consent Decree, and the cleanup of DCA was reported by local radio and television stations. (Ex. Berg Cert., 17 at 136:16-136:20.) In addition, throughout July 1990 numerous newspaper articles were published concerning Cerro's intent to clean up DCA. (See Berg Cert., Ex. 18.)

On July 27, 1990 Cerro announced to all relevant state and local officials and to all potentially affected parties its intention to remove the contaminated sediments from DCA pursuant to the Consent Decree with the IEPA. (See Berg Cert., Ex. 19.) The announcement addressed the Consent Decree and the cleanup of DCA, and stated that a Public File regarding the cleanup of DCA had been established at the Cahokia Public Library and the Sauget Village Clerk's Office. (Id.) The announcement also stated that Cerro welcomed inquires and would provide information concerning the removal action at DCA upon request. (Id.) By letter dated July 30, 1990, Cerro submitted documents to the Cahokia Public Library and requested that they be made available for public review. (See Berg Cert., Ex. 20.) Cerro also stated that additional documents concerning the removal action at DCA would be submitted on a monthly basis. (Id.) On July 31, 1990, *Cahokia-Dupo Herald* and *The*

Belleville News published a Public Notice concerning Cerro's cleanup of DCA. (See Berg Cert., Ex. 21.)

Cerro's removal of the contaminated sediment from DCA began shortly after entry of the Consent Decree. (Berg Cert., Ex. 22.) The excavated sediment was dewatered and transported to an approved landfill and the removal action was conducted with extensive oversight by the IEPA. (Berg Cert., Ex. 23 at 1-8, Ex. 24.) Any changes in the work to be performed required IEPA approval. (Id.) The last truckload of contaminated sediment left Cerro on November 1, 1990. (Berg Cert., Ex. 25.)

Following the removal of the contaminated sediment, DCA was backfilled with clean fill and graded. (Berg Cert., Ex. 26 at 11, 26.1.) Prior to backfilling, Cerro, at the IEPA's command, installed a plastic liner to serve as a vapor barrier in the excavated area. (See Berg Cert., Ex. 6 at 70-71.) Cerro completed the removal action by November 26, 1990 at a cost of \$12,836,609. (Berg Cert., Ex. 27, Ex. 25.) Monsanto Chemical Company subsequently reimbursed Cerro for a portion of those costs. On June 17, 1991, Cerro issued the Final Report for the Removal of Contaminated Creek Sediment at Dead Creek. (See Berg Cert., Ex. 26.) Thereafter, the Illinois Attorney General and the IEPA acknowledged that Cerro had completed the removal action in accordance with the terms of the Consent Decree. (See Berg Cert. Ex. 28.)

II. It is against USEPA policy and the Agency lacks the authority to aggregate Sauget Area 1 into one site

Cerro objects to the USEPA's proposal to list Sauget Area 1 on the NPL since the Agency lacks the authority to aggregate the nine separate sites included within Area 1 for purposes of HRS scoring. The USEPA's decision to aggregate Sauget Area 1 is contrary to the USEPA policy that sites should be scored and listed individually. See 48 Fed. Reg. at 40663.

The only exception to this policy is that two non-contiguous sites can be treated as one for purposes of the NPL listing if: (1) the sites were part of the same operation, (2) the potentially responsible parties would generally be the same for the sites, (3) the distance between the non-contiguous sites and the target population is essentially the same or substantially overlapping, and (4) the contamination from the sites are threatening the same ground water or surface water resource. Id. Accordingly, the USEPA must evaluate the combination of these criteria in determining whether to aggregate sites. See 48 Fed. Reg. 40664 (emphasis added).

Application of these factors to the sites included within Sauget Area 1 weighs heavily against aggregation. First, each of the individual sites included within Area 1 engaged

in separate operations. For example, while Site H and I may have been part of the same landfilling operation, at some point, there is nothing in the HRS Documentation Record to suggest a link between these operation and Sites G, L, M and N.

Indeed, Site G is a distinct former subsurface/surface disposal area. On the other hand, Site L is the location of a former surface impoundment used by the Harold Waggoner Company to dispose of wash water from a truck cleaning operation. Site M is a sand pit excavated by the H. H. Hall Construction Company in the mid to late 1940's, but no information is included in the HRS Documentation Record about waste disposal practices there. Lastly, Site N is an operations and equipment storage facility for the H. H. Hall Construction Company. Prior to 1950, a borrow pit existed at the facility which may have been used for waste disposal of concrete rubble and other demolition debris. However, no file information has been located concerning waste disposal practices at the site. Accordingly, it is evident that sites included in Sauget Area 1 engaged in distinct operations, are owned by different entities, operated in different time periods and accepted different waste streams.

Second, there is nothing in the HRS Documentation Record to suggest that the potentially responsible parties for the Area 1 Sites are generally the same. Moreover, the sites are non-contiguous and there is a substantial distance between them. The entire Sauget Area 1 extends more than two miles. In essence, the USEPA proposes to link Site I, which is located to the east of the now remediated and filled in DCA with Site N, which is located more than a half-mile downstream from Site I and to the west of Dead Creek Segment C. Lastly, to the extent that the USEPA contends that the sites threaten the same body of surface water², i.e. Dead Creek, even that contention fails with respect to DCA--the water body has been eliminated-- and Site I, which is adjacent to DCA. Accordingly, the Sauget Area 1 sites meet none of the aggregation criteria set forth at 48 Fed. Reg. 40664.

Aggregation in this case violates USEPA's own interpretation of the aggregation guidance as evidenced by USEPA's approach to other sites where the USEPA has declined to aggregate sites that come much closer to meeting the aggregation criteria than the Sauget Area 1 sites. For example, the USEPA listed the Rogers Road and the Jacksonville landfills which are located in Jacksonville, Arkansas separately on the NPL. These landfills are both owned by the City of Jacksonville and are located less than one-half mile apart from each other. The landfills share the same features and characteristics and threaten the same groundwater. In fact, the two sites are so similar the USEPA has conducted related activities concurrently so that economies of scale can be realized. (See Berg Cert., Ex. 29 at 5.) However, despite these vast similarities and their close proximity, the USEPA listed them separately.

²The USEPA did not consider or evaluate the ground water impact when computing the HRS score because the USEPA found that ground water is not used as a drinking water source in the area which results in minimal target values for this pathway. Accordingly, Cerro need not address any alleged ground water contamination.

Another example of closely related facilities that were listed separately is the Delaware Sand and Gravel and Army Creek landfills located in New Castle County, Delaware. The Delaware Sand and Gravel and Army Creek landfills are adjacent facilities and are separated from one another only by Army Creek. The sites accepted municipal and hazardous waste and a variety of hazardous substances that originated from both sites and contaminated the same aquifers and identical surface waters. (See Berg Cert., Ex. 30 at 3.) In fact, when the sites were originally proposed for NPL listing they were listed together. The only significant distinction between the two sites was ownership; the Army Creek landfill was owned by the county, whereas the Delaware Sand and Gravel landfill was owned privately. However despite the close proximity of the facilities and their common disposal contaminants, the USEPA ultimately listed the sites separately.

Two landfills in Woodland Township, New Jersey serve as a further example of similar facilities that are listed separately on the NPL, despite the fact that they are located in close proximity to one another and have similar disposal practices. The Woodland Route 72 site and the Woodland Route 532 site have common ownership and are located within three miles of each other. Both sites are located in the pinelands preservation area and both facilities accepted chemical waste which contaminated the same trenches and lagoons. Despite the fact that the two sites have been described as "nearly identical" and are being remediated concurrently, the USEPA listed each site separately on the NPL. (See Berg Cert., Ex. 31 at 2.)

The Agency's decision to aggregate the numerous sites within Sauget Area 1 is contrary to USEPA policy and practice. The Sauget Area 1 Sites fall far short of the substantial similarities shared by the facilities set forth above. Cases in which USEPA refused to aggregate the sites and instead listed and scored each site separately. See 48 Fed. Reg. at 40664. The Agency should accord a consistent interpretation of its policy and procedure to the nine separate sites listed in Sauget Area 1. Accordingly, the Agency should reconsider and reverse its decision to aggregate these sites.

Even assuming that the USEPA appropriately aggregated the Area 1 sites, it is inappropriate to include DCA in that aggregation because DCA has been remediated. USEPA policy requires the Agency to consider the current condition of a site for HRS scoring purposes. This policy is consistent with further USEPA policy that requires sites to be delisted or deleted if they are cleaned up or inappropriately listed on the NPL. See discussion infra. sections III and IV.

III. The USEPA's failure to consider the DCA removal action and the current conditions at DCA is arbitrary, capricious and contrary to law

The USEPA's proposed listing of Sauget Area 1 totally disregards the DCA removal action. For example, on pages 19-29 of the HRS Documentation Record the USEPA, in determining the hazardous substances present at DCA and calculating the HRS hazardous waste quantity, relies on the sampling conducted by E&E in 1987 and the report issued by Avendt in 1990. However, the E&E and Avendt sampling occurred before the DCA removal action. Indeed, the purpose of the Avendt study was to delineate contamination in DCA to allow a cleanup to go forward. Any hazardous substances that either E&E or Avendt identified in DCA were removed and properly disposed of as of November 1990. Likewise, the USEPA scored DCA as having a potential for air releases, notwithstanding Cerro's installation of a vapor barrier in the former DCA at the direction of IEPA for the purpose of preventing the potential for such releases with respect to any residual contamination.³

The USEPA's failure to consider the remediated condition of DCA in scoring the Sauget Area 1 sites is inconsistent with the current USEPA policy of considering current site conditions when scoring a site proposed for listing on the NPL. See 55 Fed. Reg. 51532, 51567. This current policy represents an improvement over prior USEPA procedures which failed to consider a site's remediated condition. In Linemaster Switch Corp. v. U.S.E.P.A., 938 F.2d 1299 (D.C. Cir. 1991) the court acknowledged this change in policy and stated that, "under the amended HRS, the agency now considers prior remedial actions in calculating waste quantity at a site." Id. at 1307.

The purpose behind the USEPA policy is to create incentives for parties to expeditiously remediate a site without the need for government intervention. This is precisely the initiative assumed by Cerro when it decided to cleanup DCA. In fact, the USEPA encourages parties to remediate a site so that the site will not be subject to additional governmental regulation and an NPL listing. "[C]onsideration of removal actions is likely to increase incentives for rapid actions. If there has been a removal at a site, and the hazardous constituent quantity for all sources and associated releases is adequately determined, the hazardous waste quantity factor value will be based only on the amount remaining after the removal. This will result in lowering some hazardous waste quantity factor values." 55 Fed. Reg. 51542.

The USEPA's improved policy is logical since it is a waste of government resources to score and list a site that has already been cleaned up. Nevertheless, despite this policy, Cerro's almost \$13 million cleanup effort at DCA and the detailed historical record set

³Cerro does not believe that any residual contamination is capable of emitting vapors and that the vapor barrier is merely prophylactic.

forth above, the USEPA has ignored DCA's remediated condition. If the remediated condition of DCA had been considered, the HRS score of the entire Sauget Area 1 would be reduced.⁴

Moreover, it is difficult to comprehend the IEPA's endorsement and the governor's concurrence to list DCA and aggregate the site as part of Sauget Area 1. See 61 Fed. Reg. 30575, 30578. The IEPA's prior comments belie this endorsement, since the IEPA stated that DCA was already cleaned up to IEPA satisfaction. (Berg Cert., Ex. 6 at 89:25, 90:1-7, 90:24-25, 91:1-16). In fact the IEPA recognized that their plan was to secure the DCA cleanup as an individual site cleanup. (Berg Cert., Ex. 6 at 94:5-22). Once Cerro completed the cleanup the IEPA would consider the remediated DCA as a partial cleanup of the entire Sauget Area 1; "a hot spot removal within Area 1". (Id.).

The USEPA cannot ignore that which the IEPA desperately sought to achieve-- the cleanup of DCA. (See Berg Cert., Ex. 6 at 89:25, 90:1-7, 90:24-25, 91:1-16, Ex. 14, Ex. 28.) The current condition of DCA should have been considered in scoring the Sauget Area 1 sites. Accordingly, should the USEPA aggregate these sites, the HRS scoring for the sites should be reevaluated so that a proper score can be calculated that accurately reflects the cleaned up and current condition of DCA.

IV. Even if DCA is listed on the NPL as a component of the Sauget Area 1 Sites, USEPA policy would require that the site be delisted

On November 1, 1995, the USEPA issued a Notice of Policy Change that permitted the Agency for the first time to delete a portion of a site from the NPL where such portion meets the NPL criteria for delisting. See 60 Fed. Reg. 55466. Accordingly, the USEPA will now permit portions of sites to be delisted where that portion meets the delisting criteria set forth at 40 CFR 300.425(e). These criteria include whether responsible parties have implemented all appropriate and required response actions, whether the USEPA has determined that no further cleanup by responsible parties is appropriate, and whether the portion under consideration presents any threat to public health, welfare or the environment. Delisting also requires concurrence of the State in which the site is located.

Because of the removal action that Cerro performed at DCA, that portion of the Sauget Area 1 Sites is eligible for delisting under the USEPA policy change. Cerro, as a potentially responsible party for DCA, implemented the response action that the IEPA deemed

⁴Although Site I, which is located to the east of DCA, has not been remediated pursuant to a Consent Decree entered into between Cerro and the IEPA, Site I has been closed since 1992. By letter dated October 27, 1992, the IEPA's Field Operations Section authorized the closure of Site I. After an inspection, the IEPA concluded that Cerro complied with Illinois Environmental Protection Act and 35 Illinois Administrative Code, Subtitle G, Section 814.501(b) and that Cerro was not accepting any waste. (See Berg Cert., Ex. 32.) The USEPA's failure to consider the IEPA's authorized closure of Site I and current site condition is likewise contrary to USEPA policy.

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appropriate and required. The IEPA has determined that there is no need for further response actions at DCA. (See Berg Cert., Ex. 28.) Any threat that DCA presented to public welfare or the environment has been eliminated by Cerro's response action. The State of Illinois should concur in the delisting of DCA, inasmuch as the State approved the DCA cleanup.

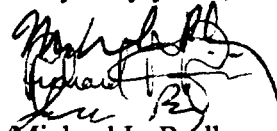
DCA meets the delisting criteria set forth at 40 CFR 300.425(e), and USEPA policy now permits the delisting of portions of NPL sites. Accordingly, if the USEPA listed the Sauget Area 1 Sites and included DCA as one of those sites, DCA would be immediately eligible for delisting. To require Cerro and the Agency to go through the trouble and expense of a delisting petition would be a tremendous waste of responsible party and Agency resources. The more logical and appropriate course is for the USEPA simply to exclude DCA from the Sauget Area 1 Sites if it ultimately chooses to list those sites.

V. Conclusion

It was arbitrary, capricious and contrary to law for the USEPA to score the Sauget Area 1 sites without regard for Cerro's remediation of DCA, to aggregate the Area 1 sites, and to include DCA within that aggregation. It is likewise inappropriate to list DCA when USEPA policy permits portions of cleaned up sites to be delisted. We, therefore, respectfully request that the USEPA reconsider and reverse its decision to aggregate the Area 1 sites, or at a minimum, exclude DCA from that aggregation. If the sites remain aggregated, the scoring of the sites must take into account the DCA cleanup.

Thank you for your consideration of these comments.

Very truly yours,


Michael L. Rodburg
Richard F. Ricci
Ira S. Berg

MLR:ng
Enclosures

cc: Henry L. Schweich,
Robert W. Webb, Esquire
Joseph M. Grana,
David Snively, Esquire

CERTIFICATION OF IRA S. BERG

IRA S. BERG, of full age, hereby certifies as follows:

1. I am an attorney-at-law of the State of New Jersey and I am associated with the law firm of Lowenstein, Sandler, Kohl, Fisher & Boylan, attorneys for Cerro Copper Products Co. ("Cerro") and, as such, am familiar with the facts set forth herein.

2. I make this Certification in support of Cerro's comment which is in response to the National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 20 published at 61 Fed. Reg. 30 30575 on June 17, 1996 to list Sauget Area 1 located in Sauget, Illinois on the National Priorities List.

3. Attached hereto as Exhibit 1 is a true and correct copy of a correspondence from David Evans, Director, United States Environmental Protection Agency, State & Site Identification Center to James W. Moorman of Cadwalader, Wickersham & Taft dated July 26, 1996.

4. Attached hereto as Exhibit 2 is a true and correct copy of a correspondence from Ira S. Berg, Esq. of Lowenstein, Sandler, Kohl, Fisher & Boylan to David Evans, Director, United States Environmental Protection Agency, State & Site Identification Center, dated July 30, 1996.

5. Attached hereto as Exhibit 3 is a true and correct copy of the Expanded Site Investigation Dead Creek Project Sites at Cahokia/Sauget, Illinois, Final Report, Volume 1 of 2, prepared for the Illinois Environmental Protection Agency which was prepared by Ecology and Environment, Inc., dated May 1988.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Expanded Site Investigation Dead Creek Project Sites at Cahokia/Sauget, Illinois, Final Report, Volume 2 of 2, prepared for the Illinois Environmental Protection Agency which was prepared by Ecology and Environment, Inc., dated May 1988.

7. Attached hereto as Exhibit 5 is a true and correct copy of a memorandum from Jeff Larson, Project Manager of the Illinois Environmental Protection Agency to Ken Mensing, Collinsville Illinois Environmental Protection Agency dated September 29, 1986.

8. Attached hereto as Exhibit 6 is a true and correct copy of a November 7, 1994 deposition transcript of Paul E. Takacs of the Illinois Environmental Protection Agency.

9. Attached hereto as Exhibit 7 is a true and correct copy of the Illinois EPA News, dated September 17, 1985.

10. Attached hereto as Exhibit 8 is a true and correct copy of a community relations plan for Sauget sites prepared by the Illinois Environmental Protection Agency dated November 19, 1985.

11. Attached hereto as Exhibit 9 is a true and correct copy of a correspondence from Keri Luly, Community Relations Coordinator of the Illinois Environmental Protection Agency to Interested Citizens and Officials dated June 16, 1988.

12. Attached hereto as Exhibit 10 is a true and correct copy of a correspondence from Henry L. Schweich of Cerro Copper Products Co. to Richard J. Carlson, Director, Illinois Environmental Protection Agency, dated August 3, 1987.

13. Attached hereto as Exhibit 11 is a true and correct copy of the Site Investigation/Feasibility Study for Creek Segment A, Volume I and II, prepared by The Avendt Group, Inc., dated June 1990.

14. Attached hereto as Exhibit 12 is a true and correct copy of a correspondence from Paul E. Takacs, of the Illinois Environmental Protection Agency to Raymond J. Avendt of The Avendt Group, Inc., dated January 30, 1990. Further attached to the correspondence is a true and correct copy of an outline for the Site Investigation/Remedial Alternatives Evaluation for Creek Segment A.

15. Attached hereto as Exhibit 13 is a true and correct copy of a correspondence from Christopher T. Bade of The Avendt Group to Paul E. Takacs, of the Illinois Environmental Protection Agency dated April 6, 1990 which attaches a true and correct copy of the cover sheet of the Site Investigation/Remedial Alternatives Evaluation for Creek Segment A Volume I prepared by The Avendt Group, Inc. Further, attached hereto is a true and correct copy of a correspondence from Christopher T. Bade, of the Avendt Group, Inc. to Paul E. Takacs of the Illinois Environmental Protection Agency dated April 20, 1990.

16. Attached hereto as Exhibit 14 is a true and correct copy of the consent decree entered into in the matter People of the State of Illinois v. Cerro Copper Products Co., Civ. No. 90-3389.

17. Attached hereto as Exhibit 15 is a true and correct copy of the certification of James L. Morgan, Senior Assistant Attorney General in the Environmental Bureau in the Office of the Attorney General of the State of Illinois. Further attached to this certification is a true and correct copy of the Motion to Approve Consent Decree with Cerro in the matter People of the State of Illinois v. Cerro Copper Products Co., Civ. No. 90-3389.

18. Attached hereto as Exhibit 16 is a true and correct copy of the IEPA News dated July 5, 1990.

19. Attached hereto as Exhibit 17 is a true and correct copy of the May 25, 1994 Volume II transcript of the deposition of Joseph Grana.

20. Attached hereto as Exhibit 18 is a true and correct copy of the following: "Cleanup to Start at Site in Sauget", *St. Louis, Post-Dispatch*, July 6, 1990; "Cerro Copper to Use \$12 Million on Cleanup", *Belleville News Democrat*, July 6, 1990; "Cerro Will Contribute \$12 Million to Cleanup", *The Herald*, July 7, 1990; "Cerro to Cleanup Polluted Waterway", *American Metal Market*, July 12, 1990; "King; Governor Reneged on Clean Creek Promise", *Cahokia/Dupo Sunday Home Journal*, July 15, 1990; "IEPA Welcomes Cerro Decision on Waste Removal", *The Herald*, July 18, 1990; and "Dead Creek Cleanup Could Cost Cerro Co. \$12 Million", *St. Louis Business Journal*, July 23-29, 1990.

21. Attached hereto as Exhibit 19 is a true and correct copy of a correspondence from Paul Tandler of Cerro Copper Products Co. to All Interested Parties, dated July 27, 1990.

22. Attached hereto as Exhibit 20 is a true and correct copy of a correspondence from Joseph M. Grana of Cerro Copper Products Co. to Loretta Lopinot of The Cahokia Public Library, dated July 30, 1990.

23. Attached hereto as Exhibit 21 is a true and correct copy of the following: a correspondence from Joseph M. Grana, Cerro Copper Products Co. to Cahokia - Dupo Herald, dated July 31, 1990; a correspondence from Joseph M. Grana of Cerro Copper Products Co. to Belleville News Democrat, dated July 31, 1990; and a public notice prepared by Paul Tandler of Cerro Copper Products Co.

24. Attached hereto as Exhibit 22 is a true and correct copy of correspondence from Joseph M. Grana of Cerro Copper Products Co. to Paul Takacs, of the Illinois Environmental Protection Agency and James L. Morgan, Senior Assistant Attorney General in the Environmental Bureau in the Office of the Attorney General of the State of Illinois dated August 14, 1990.

25. Attached hereto as Exhibit 23 is a true and correct copy of the CERCLA Preliminary Assessment Report prepared by the Illinois Environmental Protection Agency.

26. Attached hereto as Exhibit 24 is a true and correct copy of the following: a correspondence from Paul E. Takacs, of the Illinois Environmental Protection Agency to Raymond J. Avendt, of The Avendt Group, dated June 30, 1990; a memorandum from Paul E. Takacs, of the Illinois Environmental Protection Agency to Terry G. Ayers, dated July 31, 1990; a correspondence from Paul E. Takacs of the Illinois Environmental Protection Agency to Joseph M. Grana of Cerro Copper Products Co., dated September 10, 1990; a correspondence from Paul E. Takacs of the Illinois Environmental Protection Agency to Joseph M. Grana of Cerro Copper Products Co., dated September 17, 1990; a

correspondence from Paul E. Takacs, of the Illinois Environmental Protection Agency to Joseph M. Grana, of Cerro Copper Products Co., dated December 6, 1990 with attachment; and a correspondence from Joseph M. Grana, of Cerro Copper Products Co. to Paul E. Takacs, of the Illinois Environmental Protection Agency, dated August 28, 1990.

27. Attached hereto as Exhibit 25 is a true and correct copy of a correspondence from Joseph M. Grana, of Cerro Copper Products Co. to Paul Takacs, of the Illinois Environmental Protection Agency and James L. Morgan, Senior Assistant Attorney General in the Environmental Bureau in the Office of the Attorney General of the State of Illinois dated December 6, 1990.

28. Attached hereto as Exhibit 26 is a true and correct copy of the final report for The Removal of Contaminated Creek Sediment at Dead Creek Segment A Sauget, Illinois, dated June 17, 1990.

29. Attached hereto as Exhibit 27 is a true and correct copy of Dead Creek Removal Action Summary of Costs that was provided to Monsanto Chemical Company by Cerro Copper Products Co., dated April 17, 1992.

30. Attached hereto as Exhibit 28 is a true and correct copy of a correspondence from James L. Morgan, of the Illinois Attorney General's Office to the President of Cerro Copper Products Co. and Michael Rodburg, Esq., of Lowenstein, Sandler, Kohl, Fisher & Boylan, dated June 20, 1991.


31. Attached hereto as Exhibit 29 is a true and correct copy of the Record of Decision for the Rogers Road Municipal Landfill, Jacksonville, Arkansas, dated September 27, 1990.

32. Attached hereto as Exhibit 30 is a true and correct copy of the Record of Decision for the Army Creek Landfill, New Castle, Delaware, dated June 29, 1990.

33. Attached hereto as Exhibit 31 is a true and correct copy of the Record of Decision for the Woodland Township Route 72 Landfill, Woodland Township, New Jersey, dated May 16, 1990.

34. Attached hereto as Exhibit 32 is a true and correct copy of a correspondence from Glenn Savage of the Illinois Environmental Protection Agency to Cerro Copper Products Co., dated October 27, 1992 that attaches a State of Illinois Environmental Protection Agency Inspection Report.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.


Ira S. Berg

DATED: September 13, 1996

EXHIBITS ATTACHED TO
IRA S. BERG, ESQ. CERTIFICATION
IN SUPPORT OF
CERRO COPPER PRODUCTS CO.'S COMMENT
TO PROPOSED NPL LISTING OF
SAUGET AREA 1, SAUGET, ILLINOIS

EXHIBITS 1 - 3

VOLUME I

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**IRA S. BERG, ESQ. CERTIFICATION
AND EXHIBITS IN SUPPORT OF
CERRO COPPER PRODUCTS CO.'S COMMENT
TO PROPOSED NPL LISTING OF
SAUGET AREA 1, SAUGET, ILLINOIS**

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